

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

DENISE WOLFGRAM-KENNEDY,

Plaintiff,

Case No. 19-cv-774-pp

v.

NANCY BERRYHILL,

Defendant.

**ORDER GRANTING AMENDED MOTION FOR LEAVE TO PROCEED
WITHOUT PREPAYING THE FILING FEE (DKT. NO. 6)**

The plaintiff has filed a complaint seeking judicial review of a final administrative decision denying her claim for disability insurance benefits under the Social Security Act. Dkt. No. 1. The plaintiff also filed an unsigned and undated request to proceed without prepayment of the filing fee, dkt. no. 3, the court issued an order on May 24, 2019 giving her the opportunity to amend her request, dkt. no. 5. The plaintiff has filed the amended motion. Dkt. No. 6.

To allow the plaintiff to proceed without paying the filing fee, the court first must decide whether the plaintiff can pay the fee; if not, it must determine whether the lawsuit is frivolous. 28 U.S.C. §§1915(a) and 1915(e)(2)(B)(i).

Based on the facts in the plaintiff's affidavit, the court concludes that she does not have the ability to pay the filing fee. The plaintiff states that she is not employed, and not married. Dkt. No. 6 at 1. The plaintiff lists income of \$840 per month from "[r]ent on [her] property, [w]aitress" (despite the fact that she indicates that she's not employed). Id. at 2. The plaintiff states that she has monthly expenses of \$500. Id. at 2-3. The plaintiff indicates that she owns a 1999 Nissan Pathfinder worth approximately \$500 and a home worth approximately \$1,200, she has no cash on hand or in a bank account, and she

owns no other property of value. Id. at 3-4. The plaintiff has demonstrated that she cannot pay the \$350 filing fee and \$50 administrative fee.

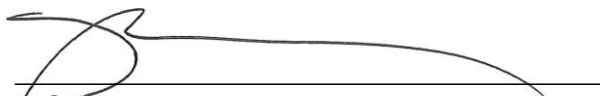
The next step is to determine whether the case is frivolous. A case is frivolous if there is no arguable basis for relief either in law or in fact. Denton v. Hernandez, 504 U.S. 25, 31 (1992) (quoting Nietzke v. Williams, 490 U.S. 319, 325 (1989); Casteel v. Pieschek, 3 Fed. 1050, 1056 (7th Cir. 1993)). A person may obtain district court review of a final decision of the Commissioner of Social Security. 42 U.S.C. §405(g). The district court must uphold the Commissioner's final decision as long as the Commissioner used the correct legal standards and the decision is supported by substantial evidence. See Roddy v. Astrue, 705 F.3d 631, 636 (7th Cir. 2013).

The plaintiff's complaint states that her claim for benefits was denied by the Commissioner for lack of disability, that the plaintiff is disabled, and that the conclusions and findings of fact by the Commissioner are not supported by substantial evidence and are contrary to law and regulation. Dkt. No. 1 at 1. At this early stage in the case, and based on the information in the plaintiff's complaint, the court concludes that there may be a basis in law or in fact for the plaintiff's appeal of the Commissioner's decision, and that the appeal may have merit, as defined by 28 U.S.C. §1915(e)(2)(B)(i).

The court **GRANTS** the plaintiff's amended motion for leave to proceed without prepaying the filing fee. Dkt. No. 6.

Dated in Milwaukee, Wisconsin this 30th day of May, 2019.

BY THE COURT:


HON. PAMELA PEPPER
United States District Judge